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Supreme Court, U.S.
FILED
SEP 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

WILLIAM JUDSON

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

William Judson
2019 E. Marshall Ave.
Spokane, WA 99207
(509) 534-5824

QUESTION PRESENTED

1. Did the Tax Court err by dismissing a petition for redetermination of deficiency where the only issues sought to be raised constitute challenges to the constitutional validity of the application of the Internal Revenue Code of 1954 to the Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

WILLIAM JUDSON

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

A writ of certiorari is respectfully sought to review the Court of Appeals Order Affirming the Tax Court dismissal of Judson's petition, entered on June 12, 1987 by the Ninth Circuit Court of Appeals.

LIST OF PARTIES

The Parties to this action are:

Petitioner/Defendant;

WILLIAM JUDSON
2019 E. MARSHALL AVE.
SPOKANE, WASHINGTON 99207
(509) 534-5824

Respondant/Plaintiff

COMMISSIONER OF THE INTERNAL REVENUE

ROGER M. OLSEN
Assistant Attorney General

MICHAEL L. PAUP
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P.O. Box 502
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OPINION BELOW

The opinion below in the U. S. Tax Court entered on June 13, 1986. The decision of the court was entered as a Dismissal for Failure To Properly Prosecute. Petitioner's motion to vacate was denied on July 2, 1986. Petitioner timely appealed his dismissal to the Ninth Circuit Court of Appeals on which affirmed the Tax Court decision on June 12, 1987.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on June 12, 1987. No Motion for Rehearing was filed. The Supreme Court's jurisdiction is invoked pursuant to 28 United States Code Section 1254 (1)

BASIS OF FEDERAL JURISDICTION

The United States Court of Appeals for the Ninth Circuit had jurisdiction over this case by virtue of Section 7482 of the Internal Revenue Code of 1954 (26 U.S.C.).

STATEMENT OF THE CASE

William B. Judson did not file federal income tax returns for years 1980, 1981, and 1982. The Commissioner of Internal Revenue determined deficiencies and additions to tax for failure to file tax returns and for negligence or intentional disregard of rules and regulations as follows:

Year	Deficiency	Additions to Tax		
		6651(a)	6653(a)(1)	6653(A)(2)
1980	$10,755.38	$2,458.52	$537.77	-0-
1981	8,688.00	2,172.00	434.40	*
1982	5,641.00	1,410.25	282.05	*

*In an amount to be determined under I.R.C. §6653(A)(2).

A timely petition for redetermination of the deficiencies was filed alleging that the Commissioner arbitrarily computed penalties, and violated the petitioner's Constitutionally protected rights. On May 28, 1986 the Court ordered the petitioner to file, before June 9, 1986, a summary of the testimony and any documents he intended to present to the court at trial in

respect to the substantive tax issues raised by the notice of deficiency. Such statement was prepared and mailed by the petitioner on June 9, 1986.

However, it was not received by the Court until June 13, the day on which the Court ordered the case dismissed for failure to properly prosecute. The Court viewed the statement as a motion to vacate its order of dismissal and denied it. The statement summarized the proposed testimony by the petitioner that he believed the income tax system to be one of voluntary compliance, and that he did not choose to waive rights inorder to comply. In addition, it summarized the issues that the petitioner desired to adjudicate. These included arguments that the Internal Revenue Code was being unconstitutionally applied to him as he was not within its jurisdiction and that such application

abused the taxing powers granted to the United States and that penalties were unlawfully imposed as a sanction against his exercise of Constitiutionally protected rights.

On appeal Judson argued that the dismissal was improper as the issue of whether his receipts constitute income is a legitimate question of law which precludes the summary judgment rendered by the Court. On June 12, 1987 the Ninth Circuit affirmed the decision of the Tax Court, conceding that the statement was timely filed but finding the court could have properly dismissed since the statement raised no meritorious issues. An award of fees and costs in the amount of $1500 was based on the Judson's argument that his wages did not constitute income based on his reliance on court decisions.

REASONS FOR REVIEW

1. The Ninth Circuit has rendered a decision which conflicts with decisions of other circuits and has so far departed from usual judicial proceedings as to call for an exercise of this Court's power of supervision.

2. The Ninth Circuit has determined a Federal Question in such a way as to conflict with applicable decisions of this Court.

ARGUMENT

1. The standards governing Tax Court dismissals are the same as those granted under Rule 41, Federal Rules of Civil Procedure. Dismissal is a harsh remedy and should be resorted to only in extreme cases. Although the trial court's action should be reversed only for abuse of discretion, review should include consideration of whether less drastic alternatives

might have been adopted, as well as the petitioner's fault in failing to comply with requirements and the burden thus placed on the respondent. There is no showing that the trial court considered any of these in Judson's case.

The Fifth Circuit found dismissal under Rule 41 to be inappropriate in all but the most flagrant circumstances where there is clear record of delay or contumacious conduct and where lesser sanctions would not serve best interests of justice, Boazman v. Economics Laboratory, Inc. (1976, CA5 Ga) 537 F2d 210, Jureczki v. Seabrook (1982, CA5 Tex) 668 F2d 851; McCloud R.R. Co. v. Savine River Forest Products, Inc. (1984, CA5 La) 735 F2d 879. The policy of law favors disposition of litigation on its merits. Dismissal was reversed where the Second Circuit found it too harsh and final, Lyford v. Carter (1960, CA2 NY); and lesser penalties were upheld, where unprepared

counsel was ordered to pay $100. for inconviences caused by his dilatory conduct, Bardin v. Mondon (1961, CA2 NY).

In this case petitioner was acting without the benefit of an attorney. He did in fact comply with the Court's order to provide a statement of his case. It was filed by mail on the date the Court fixed. On appeal, the respondent concedes that the statement was timely. Regardless, the Court of Appeals affirmed the dismissal on the grounds that it was proper anyway since it found the issues raised by the petitioner were without merit.

There are no Statutory provisions for such summary judgment. In fact the use of the summary judgment is in complete opposition to Amendment VII of the United States Constitution, "Where the value in controversy shall exceed twenty dollars, the right of trail by jury shall be

preserved." Thus in derogation of the Common Law, and therefore to be strictly construed within the framework of Rule 1 providing that rules shall be construed to secure just determination of every action, Madden v. Perry (1959, CA7 Ill) 264 F2d 169, cert den 360 US 931.

Justice Black and Justice Douglas of the United States Supreme Court recorded their objections to summary judgment in the Federal Rules of Civil Procedure (hereinafter referred to as FRCP) beginning on Page 8 of the 1983 Edition. Certainly no better argument could be raised as to the constitutionality of summary judgment than has been raised by the learned brethren. For that reason we must quote extensively from their argument.

"MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are opposed the the submission of these rules (368 US 1012-1014 and 346 US 946-947) to the Congress under a statute which permits them to "take effect" and to repeal "all laws in conflict with such rules" without requiring any affirmative

consideration, action, or approval of the rules by Congress or by the President. We believe that while some of the Rules of Civil Procedure are simply housekeeping details, many determine matters so substantively effecting the rights of litigants in law suits that in practical effect they are the equivalent of new legislation which, in our judgment, the Constitution requires to be initiated in and enacted by the Congress and approved by the President. The Constitution, as we read it, provides that all laws shall be enacted by the House, Senate, and the President, not by the mere failure of Congress to reject proposals of an outside agency. Even were there not this constitutional limitation, the authorizing stature itself qualifies this court's power by imposing upon it a solemn responsibility not to submit rules that "abridge, enlarge or modify and substantive right" and by specifically charging the Court common law and as declared by the Seventh Amendment to the Constitution. (28 USC 2072) Our chief objections to the provisions do "abridge, enlarge or modify" substantive rights and do not "preserve the right to a trial by Jury" but actually encroach upon it.

* * *

(1)(c) The proposed amendment to Rule 56(e) imposes additional burdens upon litigants to protect against summary judgments rendered without hearing evidence on the part of witnesses who are confronted by the persons against whom they testify so that these persons can subject the witnesses to cross examination. The summary judgment procedure, while justified in come cases, is made a handy instrument to let judges rather than juries try law suits and to let those judges try cases, not on evidence of witnesses subjected to cross examination, but on ex parte affidavits obtained by parties. Most trial

lawyers would agree, we think, that a litigant can frequently obtain in an actual trial favorable testimony which could not have been secured by affidavits or even by depositions."

FRCP pgs. 8-9, (1983)

Judson has had no opportunity to be heard on the issue of his tax liability. No opportunity to present his evidence or examine the witnesses against him. The effect of the Tax Court ruling sustaining the findings of the Commissioner deny him the due process required to deprive him of his property. This result is unduly harsh in light of the fact that there is no showing of willfull conduct; nor any undue burden on the respondent; nor lack of appropriate lesser sanctions.

2. The Tax Court summarily dismissed the arguments challenging the application of the Internal Revenue Code to the particular individual petitioning for a redetermination of the deficiency asserted against him by the Commissioner of Internal Revenue. On appeal

Judson primarily argued that the issue of whether his receipts of wages constituted income under the meaning given to that term by this Court. The Tax Court has admittedly repeatedly held wages to be synonymous with income. However, such determination flies in the face of decisions of this Court.

The basis of the Tax Court's position is its conclusion that Congress has defined wages as income in 26 U.S.C. Sec.61(a)(1), See Lonsdale v. C.I.R. 661 F2d 71,72 (1981). However, the fact is that the Internal Revenue Code is conspicuously lacking in making a precise definition for the term "income". And for good reason.

The U.S. Supreme Court has made the legislative intent of the Sixteenth Amendment quite clear:

> (T)he result intended, that is, the prevention of the resort to the sources from which a taxed income was derived, in order to cause a direct tax on the income, to be a direct tax on the

source itself, and thereby to take an income tax out of the class of excises, duties and imposts and place it in the class of direct taxes.

Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1915).

The result intended from the Sixteenth Amendment was to keep the income tax subject to Article 1, Section 8, of the Constitution, by keeping it an indirect (excise) tax from the source, thereby preventing a direct tax on the source, by separating the source from the income.

As the Court has consistently held:

(I)t becomes essential to distinguish between what is, and what is not "income"... Congress may not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution from which alone it derives its power to legislate, and within whose limitations alone, that power can by lawfully exercised.

Eisner v. McComber, 252 U.S. 189.

Contrary to popular belief, income is not a wage, salary, fee, first time commission, or compensation for any kind of labor. To tax the

compensation of the working people in this country, merely because they exercise their God-given right to work was not the intention of the Sixteenth Amendment.

> Whatever may constitute income, therefore must have the essential feature of gain to the recipient. This was true when the Sixteenth Amendment became effective, it was true at the time of Eisner v. Macomber, it was true under Sec. 22(a) of the Internal Revenue Code of 1939, and it is likewise true under Sec. 61(a) of the Internal Revenue Code of 1954. If there is no gain there is no income.

Conner v. U.S., 303 F.Supp. 1187 (1969).

There is no gain in compensation for labor because it is the result of an even exchange. An employer exchanges with an employee an agreed upon amount of compensation for a certain amount of time and/or services which are recognized as being equal in value. In Edwards v. Keith, 231 F.111 it was held that the First Commission was not taxable because that was mere compensation for services and that no

gain was involved. However, it was also held that additional commissions were taxable because they were ruled to be a gain, that is, something over and above, or in addition to compensation for the original services.

The Virginia State Supreme Court further held in regards to State taxes that there is a distinction between profit and wages. Compensation for labor cannot be regarded as profit, Oliver v. Halstead, 196 VA. 992, 86 S.E.2d 858 (1969). Pennsylvania's Supreme Court has also held that reasonable compensation for labor or services rendered is not profit, Laureldale Cemetary Association v. Matthews, 345 PA. 239, 47 F.2d 277, 280 (1946).

Any compensation received from the exercise of common law right to work does not involve an activity from which an excise tax may be measured. No excise tax may be imposed

upon a right secured by the Constitution. In Grosjean v. American Press Co., 297 U.S. 233 (1936), This Court declared a tax by the State of Louisiana upon the right to circulate newspapers wanting in due process. In Murdock v. Pennsylvania, 319 U.S. 105 (1943) this Court struck down an excise tax imposed upon the right to distribute religious literature.

"The great correction of excessive taxation is its oppression on the constituent, which causes a reaction to reduce it". See, Passenger cases 48 U.S. 283, 532. "It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy". See, Atchinson, T.and S.F. Ry. v. O'Connor, 223 U.S. 280, 285. Judson has been denied a remedy to correct what can be clearly seen as an unconstitutional application of the taxing power granted to Congress.

APPENDIX - A

UNITED STATES TAX COURT

William B. Judson,	)	
	)	
Petitioner,	)	
	)	
v.	)	DOCKET NO.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
_____	)	

PETITION

The Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in their Notice of Deficiency dated May 3, 1985; basis for the case Petitioner alleges as follows:

1. Petitioner is an individual with legal residence at East 2019 Marshall Avenue, Spokane, Washington 99207.

2. The Notice of Deficiency, copies of which,

including all statements by the Commissioner thereto, are attached hereto, was mailed to the Petitioner on or about May 3, 1985, having been issued by the Ogden, Utah District Office of the Internal Revenue Service.

3. The deficiency, as determined by the Commissioner, is in income taxes for the calendar years 1980, 1981, and 1982 in the amount of:

Year	Income Tax	Penalties
1980	10,755.38	3,608.18
1981	8,688.00	3,272.68
1982	5,641.00	2,241.41

all of which is in dispute.

4. The determination of tax set forth in the said Notice of Deficiency is based upon the following errors:

A. The agent for the Commissioner of Internal Revenue erred by arbitrarily understating business losses and deductions.

B. The agent for the Commissioner of Internal Revenue erred by arbitrarily understating deductions.

C. The agent for the Commissioner of Internal Revenue erred by arbitrarily overstating taxes in his computation.

D. The agent for the Commissioner of Internal Revenue erred in arbitrarily computing penalties.

E. The agent for the Commissioner of Internal Revenue has abridged Petitioner's Constitutional rights.

F. Petitioner is being denied due process as required under the Fifth Amendment to the Constitution of the United States.

5. The facts upon which Petitioner relies are as follows:

A. Petitioner has sufficient documentary evidence to prove additional business

deductions than those allowed by the agent for the Commissioner of Internal Revenue.

B. Petitioner has sufficient documentary evidence to prove additional deductions than those allowed by the agent for the Commissioner of Internal Revenue.

C. The tax computation method used by the agent for the Commissioner of Internal Revenue is based upon excessive taxable income and overstates Petitioner's tax liability.

D. The agent for the Commissioner of Internal Revenue has failed to state a basis for asserting penalties:

1. There has been no disregard for rules and regulations.

2. There has been no intentional disregard for rules and regulations, nor fraud.

3. Petitioner has submitted all information required.

E. 1. Petitioner has been penalized, coerced, and compelled in an unconstitutional manner to provide information that is not required by law because:

(a). Petitioner has not been granted immunity.

(b). Petitioner has not been informed that the statute of limitations has run out on the use of his testimony against him.

E. 2. Petitioner has been denied due process in that no summons has been issued to him in order to allow for a determination as to whether certain information is subject to Fourth and Fifth Amendment rights.

F. The facts in support of Petitioner's allegation of denial of due process are:

(a). The Seventh Amendment guarantees a jury trial in suits at common law where an excess of $20.00 is in controversy. The Constitution also

guarantees a Republican form of government which means the people, not the government, retain sovereignty. There is no alternative to pay the tax and sue for refund, because the tax in the Notice of Deficiency is excessive and Petitioner does not have enough money to pursue that alternative.

(b). By denying Petitioner the right to hire a tax accountant to represent him, the government has denied Petitioner competent, affordable representation and therefore due process.

(c). By structuring the proceedings in favor of the government, with the presumption of correctness, the government creates a situation where expertise is necessary to carry Petitioner's burden of proof and such expertise is not available.

6. Petitioner does not want this treated as a

small tax case.

WHEREFORE, Petitioner prays that this Court may hear the proceedings and determine that no deficiency exists as to the calendar years and all penalty amounts be removed, or in the alternative that the deficiency action be stayed pending the resolution of the rights issue.

Respectfully submitted this 29th day of July, 1985.

William B. Judson

East 2019 Marshall Avenue
Spokane, Washington 99207

Attached: Money Order in the amount of 60.00 payable to the U. S. Tax Court

Certified Mail No. P15 1470479

UNITED STATES TAX COURT

WILLIAM B. JUDSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 30071-85
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. and 2. Admits.

3. Admits amounts of income tax in dispute for each year. Denies remainder, and further alleges that the additions to tax in dispute are as follows:

Additions to Tax Under I.R.C.			
Year	6651	6653(a)(1)	6653(a)(2)
1980	$2,458.52	$537.77	-0-
1981	2,172.00	434.40	*
1982	5,641.00	282.05	*

*In an amount to be determined under I.R.C. 6653(a)(2).

4. A. through F. Denies.

5. A. through F., including all subparts and sub-subparts. Denies.

6. Admits.

7. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

8. FURTHER ANSWERING the petition with respect to the tax years 1980 through 1982, the income taxes due from the petitioner are not barred from assessment and collection by the statute of limitations and may be timely assessed pursuant to the provisions of I.R.C. 6501(a), in support of which the respondent alleges as follows:

(a) The petitioner's income tax return for the taxable year 1980 was due to be filed on or before April 15, 1981.

(b) The petitioner's income tax return for the taxable year 1981 was due to be filed on or before April 15, 1982.

(c) Examination of petitioner's 1980 and 1981 income tax liability was commenced after May 3, 1982.

(d) Respondent, at the time of beginning his examination of petitioner's tax returns for said years had no record of any filing of income tax returns by the petitioner for the taxable years 1980 and 1981.

(e) To date petitioner has not filed a 1980 or 1981 federal income tax return.

(f) The statutory notice of deficiency setting forth the respondent's determination of the petitioner's income tax deficiencies for the

taxable years 1980 and 1981 was timely sent to the petitioner by certified mail on May 3, 1985, which date was prior to the expiration of the three-year period for assessment applicable under I.R.C. 6501(a).

(g) Petitioner's 1982 federal income tax return was due to be filed on April 15, 1983.

(h) As of September 15, 1983, petitioner had not filed his 1982 federal income tax return, nor had he received an extension of time in which to file.

(i) Accordingly, the earliest possible date on which the statute of limitations could expire on the 1982 liability under I.R.C. 6501, would be September 15, 1986.

(j) The Commissioner's statutory notice of deficiency for the taxable year 1982 was issued on May 3, 1985, well within the three year statute of limitations under I.R.C. 6501.

WHEREFORE, it is prayed:

1. That the relief sought in the petition be denied;

2. That the deficiencies in income taxes for the taxable years ended December 31, 1980, 1981 and 1982, as set forth in the statutory notices, be in all respects approved; and

3. That the Court determine that the assessment and collection of the deficiencies in income taxes' for the taxable years ended December 31, 1980, 1981 and 1982, as set forth in the statutory notices, are not barred by the statute of limitations.

FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

Dated: Oct 18, 1985 By: _____
RICHARD J. SHIPLEY
District Counsel

OF COUNSEL:
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Regional Counsel
BLAKE W. FERGUSON
Attorney
Internal Revenue Service
Room 2710, Federal Building
915 Second Avenue
Seattle, Washington 98174
Tel. No. (206) 442-5275

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on petitioner by mailing the same on Oct 18, 1985 in a postage-paid wrapper addressed to him at East 2019 Marshall Avenue, Spokane, Washington 99207.

Dated: Oct 18, 1985

Blake W. FERGUSON
Attorney

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM B. JUDSON	)	
	)	
Petitioner,	)	
	)	
V.	)	Docket No. 30071-85
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

ORDER

The Court having on June 13, 1986 entered an Order and Order of Dismissal and Decision and petitioner having on June 13, 1986 filed a "STIPULATION OF FACTS", after due consideration, it is

ORDERED that the Clerk of the Court is directed to file, as of June 13, 1986, petitioner's stipulation of facts as a motion to vacate the Court's above mentioned Order and Order of Dismissal and Decision (see Rule 162, Tax Court Rules of Practice and Procedure) and said

motion is hereby denied. The document submitted by petitioner furnishes no grounds upon which said motion might be granted beyond the grounds already determined by the Court to be without merit in the Memorandum Sur Order which accompanied the Court Order and Order of Dismissal and Decision entered on June 13, 1986. It is further

ORDERED that the above-mentioned Order and Order of Dismissal and Decision is continued in full force and effect.

Theodore Tannenwald, Jr.
Judge

Dated: Washington, D.C.
July 2, 1986

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM B. JUDSON	)	
	)	
Petitioner,	)	
	)	
V.	)	Docket No. 30071-85
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

ORDER AND ORDER OF DISMISSAL AND DECISION

The Court having issued an order, dated May 28, 1986, and petitioner having taken no action with respect to such order, after due consideration, it is

ORDERED: That, for the reasons set forth in the accompanying Memorandum Sur Order, the above-docketed case is dismissed for failure of petitioner properly to prosecute and said case is stricken from the calendar of the trial session scheduled to commence at Helena, Montana on June 23, 1986, pursuant to prior notice to the

parties. It is further

ORDERED AND DECIDED: That there are deficiencies in income taxes (without regard to prepayment credits) and additions to the tax under sections 6651(a), 6653(a)(l), and 6653(a)(2), I.R.C. 11954, as amended, due from petitioner as follows:

		Additions to Tax	
Year	Deficiency	§6651(a)	§6653(a)(l)
1980	$10,755.38	$2,458.52	$537.77
1981	8,688.00	2,172.00	434.40
1982	5,641.00	1,410.25	282.05

and further, that the deficiencies for the taxable years 1981 and 1982 in the amounts of $8,688 and $5,641, respectively, are an underpayment attributable to negligence or intentional disregard of rules and regulations within the meaning of section 6653(a)(l); accordingly, additional amounts as prescribed by section 6653(a)(2) shall be added to the tax.

Theodore Tannenwald, Jr.
Judge

Entered: Jun 13, 1986

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM B. JUDSON	)	
	)	
Petitioner,	)	
	)	
V.	)	Docket No. 30071-85
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

MEMORANDUM SUR ORDER

TANNENWALD, Judge: This case is another in a long line of "tax protester" cases whose claims have been uniformly rejected by the courts. E.g. Sisk v. Commissioner, __ F.2d __(6th Cir. May 22, 1986, 58 AFTR 2d 86-5044, 86-1 USTC par. 9433); Coleman v. Commissioner, __F.2d__(7th Cir. May 7, 1986, 57 AFTR 2d 86-1420, 86-1 USTC par. 9401); Carter v. Commissioner, 784 F.2d 106 (9th Cir. 1986).

Petitioner has refused to comply with the order of the Court, dated May 28, 1986. The contentions as set forth in the petition have been

dealt with in the Court's order, dated May 28, 1986, and no purpose will be served by repeating petitioner's contentions and the cases relied upon by the Court in rejecting Athese contentions. See also McCoy v. Commissioner, 696 F.2d 1234 ;(9th Cir. 1983), affg. 76 T.C. 1027 (1981). In view of the foregoing and pursuant to notice of contemplated action by the Court in its order to show cause,[1] dated May 28, 1986, the above-docketed case will be dismissed for failure of the petitioner properly to prosecute.

An appropriate order and decision will be entered.

---

[1] Petitioner was also put on notice by the Court's order, dated May 28, 1986, that he had an obligation to comply with Rule 91(a) of the Tax Court Rules of Practice and Procedure, and by the notice of trial, served on petitioner, on March 4, 1986, and by the memorandum from the Clerk of the Court, dated March 4, 1986 (a copy of which is attached hereto), that the above-docketed case might be dismissed if he failed to stipulate facts.
See Larsen v. Commissioner, 765 F.2d 939, 941 (9th Cir. 1985).

CERTIFICATE OF SERVICE

Petitioner/Appellant hereby certifies that copy of the foregoing Excerpt of the Record has been mailed by U.S. mail, postage prepaid, to opposing counsel this ___day of ____ , 1986, to:

ROGER M. OLSEN
Assistant Attorney General
Tax Division

MICHAEL L. PAUP
Chief, Appellate Section
Tax Division Department of Justice
P.O. Box 502 Washington, D.C. 20044

_____

William Judson
Petitioner/Appellant Pro Se
2019 E. Marshall Ave.
Spokane, WA 99207

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM B. JUDSON, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 86-7571 Tx. Ct. No. 30071-85 MEMORANDUM*

Appeal from
the United States Tax Court

Submitted May 15, 1987**

Before: BROWNING, SKOPIL and KOZINSKI, Circuit Judges.

Judson appeals the Tax Court's dismissal of his petition for redetermination of deficiency. On May 28, 1985, the Tax Court ordered Judson to file a statement by June 9, containing the substantive issues he would present at trial. The court further

advised Judson that the contentions he had raised thus far were without merit. Because Judson had not responded, the court dismissed his petition on June 13, 1985. The same day, the court received Judson's "Stipulation of Facts" and his statement of proposed testimony. The court treated this as a motion to vacate. Finding that the documents presented no issues other than those already found to be unmeritorious, the court denied the motion.

The Tax Court's dismissal for failure to timely comply with its order to file a statement of issues and undisputed facts was not an abuse of

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Cir. R. 3(f).

discretion. See McCoy v. Commissioner, 696 F.2d 1234, 1236 (9th Cir. 1983) . Even if the statement was timely filed, the court could have properly dismissed the petition, since the statement raised no meritorious issues. See id.; Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986). Judson fails to even discuss the pertinent issues on this appeal. His argument on appeal consists almost entirely of the frivolous contention that wages are not income. Carter, 784 F.2d Bat 1009. We award the government attorney's fees and costs in the amount of $1500. Fed. R. App. P. 38.

AFFIRMED.